

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 10420 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

GUJARAT KAMGAR PANCHAYAT - Petitioner(s)

Versus**STATE OF GUJARAT & 1 - Respondent(s)****Appearance :**

MR GM JOSHI for Petitioner(s) : 1,
 MR PD BHATE, AGP for Respondent(s) : 1,
 MR KS NANAVATI, SR. ADVOCATE WITH MR PS CHARI for Respondent(s) : 2,

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**Date : 06/10/2005****ORAL JUDGMENT**

In the present petition, the petitioner Gujarat Kamgar Panchayat (Union for short) has challenged the

legality of an order dated 28.7.2004 passed by the State Government refusing to refer certain demands raised by the petitioner for its adjudication before the appropriate Court/Tribunal under the Industrial Disputes Act.

2. It appears that at the instance of one Gujarat Mazdoor Panchayat a reference has been made by the State Government for its adjudication by the Industrial Tribunal in which the terms of reference are whether the so called transfer of Navneet Press Limited is proper or not and if yes what rights the workmen are entitled to receive. The Government was of the opinion that the principal demand raised by the petitioner Union, namely Navneet Press Limited, Navneet Publication India Limited, Sandeep Agency and Gala Publishers have common administrators and owners and all institutes are carrying on business, trade and commerce under the trade mark of Navneet and therefore all these institutes should be considered one and same is covered under the reference (IT) No.228/97 which has been referred with the above noted terms of reference. It is noted in the impugned order that on account of similarity of the demands, it is not necessary to make a fresh reference for adjudication

and the petitioner Union can join in the pending reference. Other three demands raised by the petitioner Union were consequential to the main prayer and were turned down for similar reasons except in case of demand No.2 in which the petitioner Union sought to challenge the termination of the workmen dated 4.8.97 as illegal and unlawful. Such a demand was refused to be referred stating that the Union can challenge the action of termination of the Management through criminal proceedings.

3. There is not much dispute about the fact that demands No.2, 3 & 4 sought to be raised by the petitioner Union are consequential to the first demand, the nature of which is noted hereinabove. Learned advocate Shri Joshi submitted that the Management has been agitating before the Industrial Tribunal in the pending reference (IT) No.228/97 that the reference is not properly made. In that view of the matter, it would not be correct on the part of respondent No.2 to oppose the present petition. It is contended that respondent No.2 cannot be permitted to oppose the pending reference (IT) No.228/97 on the ground of its non-maintainability on account of any alleged defect in making the reference and at the

same time oppose this petition on the ground that the demands sought to be raised by the petitioner-Union need not be referred for adjudication on account of pending reference.

4. Learned Senior advocate Shri K.S.Nanavati appearing with learned advocate Shri Chari for respondent No.2 stated that before the Industrial Tribunal in pending reference (IT) No.228/97 the management will not press their application Ex.64 dated 8th June 2002 in which the objection to the maintainability of the reference was raised as being defective having been made by the Government in exercise of powers under section 10(1)(a) of the Industrial Disputes Act. In view of this statement, the apprehension of the learned advocate for the petitioner is taken care of. Learned advocate Shri Nanavati also submitted that as observed by the Government in its impugned order, it would be open for the petitioner Union to join in the pending reference (IT) No.228/97.

5. In view of the above developments, if one peruses the impugned order passed by the Government refusing to refer the demand raised by the petitioner Union for its

adjudication, it is clear that primarily the ground on which the reference is turned down is that there would be duplication of references and that reference (IT) No.228/97 is already pending for adjudication in which the Tribunal is considering the question of rights that the workmen can seek under the circumstances. The reasons stated by the Government for refusal to refer the demand are just and proper and call for no interference. The impugned order therefore is not required to be interfered with. I may only record that the reasons stated for refusing to refer the second demand sought to be raised by the petitioner Union in which the Government has recorded that the workmen can challenge the action of the management in terminating the services through criminal proceedings is not entirely satisfactory. However, since demands No.2, 3 & 4 are consequential to the main demand sought to be raised by the petitioner Union, ignoring somewhat defective logic for refusing to refer the second demand, I find that this is not a fit case for exercising powers under Article 226 and 227 of the Constitution of India to strike down the order passed by the Government.

6. In the result, the petition is rejected. Rule is

discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)